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SPECIAL CRIMINAL APPLICATION NO. 800 OF 1995

Date of Decision : 1.3.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circ...

Civil Judge ?

Mr.N.V.Solanki , learned Advocate for the Petitioner  
Mr.S.N.Shelat, learned Addl.Advocate General WITH  
Mr.S.R.Divetia, learned AGP for Respondent Nos.1 to 3  
Mr.P.M.Thakkar, learned Advocate for Respondent Nos.4 to 7

CORAM : N.J.PANDYA & A.R.DAVE,JJ

1.3.1996

ORAL JUDGMENT : [ Per : Pandya, J ]

The matter came to be dealt with on 19th June 1995 by our learned colleagues R.A.Mehta & S.K.Keshote, JJ when office placed before the learned Judges a letter dated 28th March 1995 received from one Shri Bhailalbhai Bhatt along with accompaniments. Before placing the aforesaid letter before the said learned Judges, the office obtained necessary orders from hon'ble Chief Justice on 5th May 1995 to place the aforesaid matter before the learned Judges. On 19th June 1995, the learned Judges issued Rule making it returnable on 10th July 1995 and learned AGP Shri S.R.Divetia appeared and waived service of Rule on behalf of respondent no.1 State. On returnable date i.e. 10th July 1995, no affidavit was filed and in-charge Govt. Pleader requested for time. After making certain observations on that day, time for filing affidavit was granted till 17th July 1995 and that Mr.P.B. Upadhyay and Mr. N.N. Manjaria also remained present on that day and their presence was recorded. These two officers happened to be members of the investigating team in connection with the alleged incident. The matter was again dealt with on 17th July 1995 and on that day, after perusing the affidavit of Addl.Chief Secretary, those very learned Judges expressed their dissatisfaction and, therefore, issued certain directions which are of much importance so far as the present proceedings are concerned. Pursuant thereto, details were supplied and finally by the order dated 27th July 1995, those very learned Judges directed to join all the four members of the investigating team as opponents giving their names in para-6 of the order at page-3 and also referring to three Supreme Court pronouncements referred to in para-7 and also ordered that notices be issued to the persons who are said to be the victim of the alleged contemptuous act on the part of those four respondents. Thereafter, the matter came up before those learned Judges on 21st August 1995 on which date out of four members of investigating team, three members were present before the Court and one was reported to be sick and also D.S.P., Rajkot (Rural) personally remained present in the Court and they sought time for filing affidavit. On that day, learned Advocate Shri N.V.Solanki appeared on behalf of original accused persons. The matter again came up on 4th September 1995 and on that day, time for filing affidavit was sought on behalf of those police officers which was reluctantly, as it seems, was granted upto 8th September 1995 and thereafter, the matter was declared not to be treated as part-heard.

On behalf of four police officers of the investigating team, only one officer filed affidavit i.e. Dy.S.P. Shri P.B. Upadhyay and that victims of the alleged contemptuous act have also filed their affidavits and were represented by learned Advocate Shri Solanki.

On behalf of the State Shri Divetia appears and along with him learned Addl.Advocate General Shri S.N.Shelat appears. On behalf of said four police officers, learned Advocate Shri

P.M.Thakkar appears and for those victims, learned Advocate Shri Solanki appears.

So far as the said four officers are concerned, the stand taken is very simple that Sir, alleged victims of the contemptuous act have already invoked jurisdiction of competent court by filing as many as six complaints which are bearing Nos. 25/95 filed on 17.5.1995, 26/95 filed on 17.5.1995, 27/95 filed on 17.5.1995, 28/95 filed on 17.5.1995 as also two more complaints being Nos. 29/95 and 30/95 and that they are pending before the Addl. Chief Judicial Magistrate, Gondal, District : Rajkot. So far as the incident is concerned, the stand taken by the State Government is clear both the form of affidavit of Addl. Chief Secretary as well as in affidavit of DSP, Rajkot (Rural) namely Shri Atul Karwal that in view of the pendency of criminal complaints, no inquiry into the incident is made. DSP Shri Karwal has also specifically made reference to sec.207 of the Cr.P.Code and deposed that since criminal case was pending in the Court of Addl. Chief Judicial Magistrate, Gondal it would not be advisable for him to hold an inquiry in the matter under sec.207 of the Cr.P.Code. The alleged victims of the incident, nodoubt, stuck to their story of the incident in their affidavits.

The glaring fact that emerges so far is that at the time when first order came to be passed on 19th June 1995 on the strength of the alleged letter dated 28th March 1995, this Court was not posted with the fact that several criminal complaints as narrated above, have been filed in the month of May 1995. At the time when Rule came to be issued in the matter, the victims of the incidents who have filed complaints, themselves were not before the Court. Victims having chosen to invoke the jurisdiction of the criminal court as a result of alleged contemptuous act, and victims became complainants and those police officers have become accused in aforesaid criminal cases which are pending. Obviously, the situation has radically altered so far as the present case is concerned.

In order to appreciate the entire episode, the facts in brief of the alleged incident have to be narrated. The letter dated 28th March 1995 and other material which is now on record, indicate that at the time when those accused-complainants were apprehended, they were taken in the police custody, man-handled and were ill-treated and they were forcibly tonsured i.e. their hairs were cut. In this regard, obviously the State Government, it seems had not taken any action and when finally due to the directions issued by this Court, details were called for, it appears that as noted above as per the earlier orders, the State Government has not taken any action for almost two months. By that time i.e. 20th March 1995- date of incident till the date of filing of complaints i.e. 17th May 1995, the only thing that happened is that those accused were so ill-treated that according

to them, they have approached the competent court by way of filing criminal complaints and simultaneously, a letter of 28th March 1995 was received by this Court and was dealt with in the aforesaid manner on 5th May 1996 and as a result when it was placed before our learned Colleagues, they passed different orders on different dates as aforesaid.

The situation that emerges, therefore, is that on one hand there is said first order of this Court dated 19th June 1995 on the basis of the letter dated 28th March 1995, which necessarily could not have referred to filing of the complaints because that is an event taking place almost after two months. The Court, while passing that order, was also not aware of that fact of filing of complaint and it could not have been.

The net result, therefore, is that on one hand, there is a complaint pending and on the other hand, present proceedings under the Contempt of Court Act are also pending in respect of one and the same incident. We agree with learned Advocate Shri Solanki appearing for those victims that pendency of criminal case by itself cannot come in the way of this Court to exercise powers under Contempt of Courts Act which are plenary as well as in original jurisdiction conferred under the Contempt of Court, 1971 and Constitutional guarantees and that in every such case, to get criminal complaint filed and to sit quiet. We entirely agree with learned Advocate Shri Solanki. However, in view of the factual aspect which has been born out by various affidavits which we are not referring to and that victim of the alleged incident - accused persons filed criminal complaints against the concerned police officers wherein the concerned police officers who apprehended the said accused complainants, have been arraigned as accused and that said police officers form part of the investigating team and, therefore, they are very important witnesses so far as the criminal cases are concerned and in that background, we feel that not only because criminal case has been filed by those victims of the alleged contemptuous act who are hereinafter referred as complainants for our purpose, but because it is likely to affect the proceedings before the competent court of Addl. Chief Judicial Magistrate, Gondal, Dist : Rajkot in dealing with those criminal cases and in facts and background as set out in the present case which we are not referring in detail for the reasons stated above, for the present, the contempt proceedings initiated by this Court suo motu requires to be dropped.

Likewise the alleged contemnors are also taking stand that so far as the merits of the application is concerned, on account of pending criminal case, they cannot be compelled to open their mouth. In this regard, if relevant provisions of Cr.P.Code along with constitutional provisions are read, no one can be compelled to be the witness against one's own self. In

our opinion, they do have some basis for the stand taken by them and they cannot be faulted with.

The State is taking stand that the pendency of criminal cases would prompt them not to hold inquiry. Contemners have also taken that stand and so far as they are concerned, from their point of view, they are correct that their rights are violated so far as right of the accused under Cr.P.Code as well as a citizen, under the constitutional guarantees conferred on them as accused is concerned.

In this factual background, without entering into the question whether the stand taken either by the State or by the accused is correct or not and that fact insisted upon by the complainant- each one of them is correct or not, we are not entering into merits at all and simply decide that because of the aforesaid background, these proceedings are required to be dropped.

Reference was made to those three judgments referred to in para-7 of the order dated 27th July 1995, one which refers to death in custody, other is with respect to handcuffing and third one is regarding filing of false affidavit. One another judgment is referred to by learned Advocate Shri Solanki is that of Shri N.L. Patel, Chief Judicial Magistrate, Nadiad. But, we are not entering into the details of those various judgments as we have not entered into the merits of the case. We are not commenting upon any of the judgment whether they are applicable to the present case or not.

Reference was also made to sec.2(c) of the Contempt of Court Act, 1971 which defines criminal contempt. No doubt, on behalf of contemptner an attempt was made to show that in view of the provisions of this section, no contempt whatsoever is made out and as against that, on behalf of the complainants, learned Advocate Shri Solanki has submitted that with reference to N.L. Patel's judgment, it would definitely be a criminal contempt. We have referred to these statements as they were made at the bar, but again we defer to make any observations because we are not entering into the merits of the case.

Again at the cost of repetition, we clarify that the Court is not at all holding that the pendency of the criminal case can be the bar to its powers to exercise jurisdiction under the provisions of Contempt of Court Act, and none of the observations made in this order will come in the way of the Competent Court where those various criminal complaints are pending which has to be decided on its own merits in accordance with evidence on

record in accordance with law.

In the result, these contempt proceedings are dropped.  
Rule is discharged. Copy of this order to be sent to the learned  
Addl. Chief Judicial Magistrate, Gondal, District : Rajkot.

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